IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH JAIPUR.

O R D E R

State of Rajasthan
Vs.
M/s.Tej Enterprises & Ors.

S.B. CIVIL WRIT PETITION NO.1191/2000.

Date of Order:- 14 August, 2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri B.L. Avasthi, Addl.Govt. Advocate.
Shri V.P. Bishoni for the respondents.

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Reportable

Heard learned counsel for the parties.

2) The State of Rajasthan has come up in writ petition against the order dated 27/6/1998 passed by the Additional District & Sessions Judge No.5, Jaipur City, Jaipur in an appeal preferred by

respondent No.1 under Section 6C of the Essential Commodities Act, 1955 (for short, “the Act of 1955”) thereby reversing the order dated 24/11/1997 passed by the District Collector under Section 6A of the said Act confiscating 240 Gas Cylinders.

3) Factual matrix of the case is that the District Supply Officer received certain complaints against M/s.Tej Enterprises, having retail outlet of Indian Oil Corporation Ltd. (IOCL) for distribution of Liquid Petroleum Gas (LPG) in the allotted area. These complaints were with regard to the black marketing of gas cylinders and quantity of gas contained in the gas cylinders being

lesser than the prescribed quantity is in violation of conditions of the license and the provisions of the Rajasthan Petroleum Product (License & Control) Order, 1990 and Regulation of Supply & Distribution Order, 1993. On receiving such complaints, the District Supply Officer with enforcement staff of the supply office, members of the Indian Oil Corporation Ltd. and Inspector of Industries & Inspector, Weightage and Measurement Department reached at the place close to Laxmi Mandir Circle, Tonk road, Jaipur and found respondent No.1 storing 264 gas cylinders under the open sky in an unauthorized place in violation of the conditions of license as also various clauses of the

Control Order of 1990 and that of 1993. It was found that out of 264 gas cylinders, 227 gas cylinders were having requisite quantity of gas whereas 37 gas cylinders were empty and out of 37 gas cylinders, 7 gas cylinders were of Bharat Petroleum Corporation Ltd. and 17 gas cylinders were of Indane Gas. On the spot, Shri Dayal Singh, Chief Agent of M/s.Tej Enterprises (respondent No.1) was present and there were other labourers. They were found involved in filling the empty cylinders from the full cylinders of L.P.G. After measurement of these, 58 gas cylinders were found having lesser weight of gas ranging between 400 gm. and 4,900 kg. They were seized on the spot. It was found that

they were using some apparatus of iron for filling the gas into empty cylinders from the cylinders full of gas. Such apparatus were also seized. When enquired, the Chief Agent of respondent No.1 contended that he was selling HPCL to the customers as per the directions of the respondent-firm. The Deputy Commissioner Headquarter, Food & Civil Supply Department passed an order on 15/5/1996 holding that the firm had violated the terms and conditions of the Control Order 1990 as well as of Control Order 1993. Deputy Commissioner further held that the respondent-firm was guilty of violation of clause 14 of the Control Order 1990 in specific. He directed forfeiture of its security. The District

Collector passed an order dated 24/11/1997 under Section 6A of the Act of 1955 confiscating the seized gas cylinders. Aggrieved thereby, respondent No.1 filed an appeal before the learned Additional District Judge No.5, Jaipur City, Jaipur under Section 6C of the Act of 1955 who vide order dated 27/6/1998 allowed the appeal and set-aside the order passed by the District Collector. Hence, this writ petition.

4) I have heard Shri B.L. Avasthi, Additional Government Advocate and Shri V.P. Bishnoi, learned counsel for the respondents.

5) Shri B.L. Avasthi, learned counsel for the petitioner argued that the learned

A.D.J. erred in law while allowing the appeal of respondent No.1 and setting aside the order of the District Collector whereby he confiscated the gas cylinders of the defaulting lincense. He submitted that the raid was conducted by the joint team headed by D.S.O. and Asstt.D.S.O., Member of the IOCL, Inspector Weight & Measurement Department and other enforcement staff. This raid was result of complaints continuously received by the office of D.S.O. about malpractices being adopted by the respondent-firm. Staff of respondent No.1 was found filling gas from the full gas cylinders into the empty cylinders. While respondent No.1 was having agency of IOCL, it had no

explanation whatsoever why on spot 37 cylinders of other companies were found. 58 gas cylinders were found of less standard weight. They were having lesser quantity of gas than required. In this manner, genuine customers were being cheated through black marketing. Learned Additional District Judge has committed error of law in not correctly appreciating the evidence and material on record specially Condition Nos.2A and 2B of the license issued to the respondent-firm in the Control Order of 1990. The learned appellate court has given a wrong interpretation to the note given below of Condition No.2 of the license which required that in case the licensee stored

the gas cylinders at a place other than the notified godown, he shall have to inform the licensing authority about the same within 48 hours. Additionally, the note given below Condition No.2 supra required that even if the respondent wanted to store 240 gas cylinders at a place other than the prescribed godown, owing to the reason that the road leading to the godown was under repair, he was still requested to inform the licensing authority within 48 hours of such storage. But in this case, even this argument was not available to the respondent because storage of the cylinders was made at an open place under sky. Shri Avasthi submitted that the learned appellate court

has wrongly interpreted the note and the aforesaid clauses of the license and thus the learned appellate court has failed to correctly appreciate the note, contents of the documents and the Control Order of 1990. The learned appellate court has also erred in law in accepting the explanation offered by the respondent-firm that it had been receiving the underweight gas cylinders from the IOCL and had been drawing attention of the said company vide several communications to this effect. The learned appellate court therefore wrongly held that without making proper enquiry into these aspects, the District Collector was not justified in confiscating the gas cylinders. Shri Avasthi argued that no

such plea was set up by the respondent-firm before the District Collector with reference to any correspondence etc. but only a general argument was made that in past also, gas cylinders having lesser quantity used to be received by them. But then, it was for the respondent-firm to ensure that such gas cylinders are not supplied to the customers. On this basis, the respondent-firm could not escape from its liability. Shri B.L. Avasthi therefore prayed that the writ petition be allowed and the order passed by the appellate court of Additional District Judge be quashed and set-aside.

6) Per contra, Shri V.P. Bishnoi, learned counsel appearing for respondent

No.1 argued that the learned Additional District Judge in exercise of the powers conferred upon him under Section 6C of the Act of 1955 has rightly allowed the appeal on judicious application of mind. So far as 37 empty gas cylinders are concerned, 17 of these cylinders were such which were owned by the respondent-firm. Remaining 261 cylinders were having correct weight. There was therefore no reason for confiscation of these 187 cylinders particularly when no irregularity was found with regard to any of them. It was argued that so far as storage of the cylinders from a place other than the declared godown is concerned, it was due to the reason that road leading to the

godown was under construction at the relevant time and 306 cylinders had been unloaded from the truck on that very day. Out of which 240 cylinders were given to Shri Dayal Singh for the purpose of distribution. It was argued that note below Condition No.2 of the license clearly provided that in case the storage of the gas cylinders was made at place other than the notified godown, information of the same shall have to be given to the licensing authority within 48 hours. Gas cylinders found at place in question therefore could not be of a time anterior to the expiry of 48 hours. In view of the aforesaid note therefore storage could not be treated as illegal

nor could it be taken as violative of the license order. The appellate court has relied on the various judgments available on the subject. It was argued that in the past also the respondents had been receiving the gas cylinders not having the standard weight and they had been repeatedly informing the divisional office of the IOCL about this and this issue was raised before the Collector also during confiscation proceedings of the gas cylinders. The Collector however without making enquiry into this aspect proceeded to hold the respondent-firm guilty of underweight. The learned appellate court was therefore justified in holding the order passed by the Collector as illegal.

The District Collector passed the order by exceeding the scope of his jurisdiction and confiscation was therefore bad in law.

7) I have given my earnest consideration to the rival submissions made by the learned counsel for the parties at the bar and perused the material on record.

8) Confiscation order passed by the Collector has been reversed by the learned Additional District Judge in appeal mainly on interpretation of the Note below the Condition No.2 of the license. In order therefore to appreciate the import and meaning of the aforesaid Note, it would be best to extract the Condition No.2 along with the Note, as under:-

> “2.(a) The licensee shall carry on the business of aforesaid Petroleum Products between.....to.....hours at the following place:-
> .....
> (b) The Petroleum Products in which the aforesaid business is to be carried on shall not be stored at any place other than the godowns mentioned below:-
> 1. .....
> 2. .....
>
> Note :- If the Licensee intends Storing the Petroleum products in place other than those specified above, he shall give intimation in writing to the Licensing Authority within a period of forty eight hours of actually storing of the petroleum products therein. He shall also produce the licence before the Licensing Authority within a fortnight of his giving intimation mentioned above, for the purpose of making requisite changes.”

9) A perusal of the aforesaid Note, would make it clear that in case the

licensee stores the gas cylinders at a place other than the notified godown, he is required to inform the licensing authority within 48 hours. What is important to be considered is whether seizure of as many as 264 gas cylinders which included 27 empty gas cylinders from other company and 58 gas cylinders having less than the standard weight, can be accepted as the case of temporary storage and therefore even if the petitioner did not inform the licensing authority, that would not result in breach of the condition of licence because the period of 48 hours had yet not expired. Besides, whether putting such large number of cylinders out in open on the road side can

be validly accepted as temporary storage, as has been done by the learned Additional District Judge. Reading the aforesaid note given below the Condition No.2 clearly indicates that the information that was required to be given to the licensing authority was that of temporary storage of the gas cylinders at a place other than the notified godowns. The place where the gas cylinders are temporarily stored has to therefore have some semblance of being called a godown. The appellate court clearly erred in law in misconstruing the aforesaid clause by holding that the recovery of all these cylinders from an open place by the side of the road can be considered as a temporary storage and

therefore there was no violation of Control Order, 1990. Liquid Petroleum Gas is an inflammatory substance and therefore apart from the conditions of license issued by the licensing authority under the Control Order, 1990, the godown set up by the licensee of retail outlet has to conform to various other safety requirements under the Petroleum Act, 1934 (for short, “Act of 1934”) and the Explosives Act, 1884 (for short, “Act of 1884”). According to Section 4 of the Act of 1934, the import, transport and storage of gas cylinders can be made subject to various safety conditions. According to Rule 116 of the Petroleum Rules, 2002, no person can store petroleum except in

accordance with the license granted under the said Act.

10) Performa of license given in Form-12 of the Petroleum Rules, 2002 (for short, “Rules of 2002”) in Condition No.2 indicates that the safety parameters which are required to be adhered to in the case of a godown which amongst various other conditions provides that storage shall be adequately ventilated near the ground floor and also near the roof and shall not be attached to any building in which any person resides or works or where the persons assemble for any purpose. Various other precautions have been given therein. In my considered view, therefore, the interpretation placed by the learned

Additional District Judge on the language of the Condition No.2 along with the Note below, is wholly erroneous.

11) Furthermore, the view taken by the learned Additional District Judge that since the aforesaid Note permits the licensee to inform the licensing authority within 48 hours of such temporary storage, therefore, the period of 48 hours having not been expired, even if the gas cylinders were seized from the place in question, this cannot be taken as a violation of the condition of the license. This conclusion is based on mis-construction of the aforesaid Note by treating the open place as the temporary storage and, therefore, to say the least,

neither appeals to reason nor to the logic. Argument that even if the information was not given, this could not be violation of the condition of license because period of 48 hours was yet to expire, in the first place proceeds on the presumption that the place where from the cylinders were seized was a temporary godown. Besides that, there is another fallacy in this interpretation bordering on absurdity which even if is accepted for the sake of argument is that what would be the starting point for counting 48 hours and it is not known that how often the licensee would be putting gas cylinders in the open place and claiming benefit of such unfounded interpretation.

12) Yet another argument which appears to have been weighed with the learned Additional District Judge in reversing the order of the Collector is that the petitioner had been receiving the underweight cylinders for quite sometime in the past from bottling plants at Sawai Madhopur and that it had been also inviting attention of the concerned authorities of the IOCL about this. On scrutiny of the material placed on record, it is not evident whether such a plea was raised by the petitioner on the basis of any correspondence/letters or otherwise, on record. Even if this be accepted that gas the cylinders was in lesser than the prescribed quantity, the gas cylinders

still could not be entrusted to the agent for onward supply to the customers because that was an issue which the petitioner as a licensee was required to sort out with the supplier-IOCL. If the gas cylinders received by the petitioner were having lesser quantity of gas, there was no reason why such gas cylinders should have been supplied to the customers. Besides, the pleas set up by the respondent-licensee are contradictory in terms. While on the one hand, the case of the respondent, as evidenced from the argument made before the appellate court, is that the cylinders were entrusted to Dayal Singh as per the agreement between him and the respondent-licensee, for distribution.

In fact, this very argument was reiterated by the licensee before the Deputy Commissioner, Food and Civil Supplies which is evident from order dated 15/5/1996 (Annexure-4) whereunder its security was forfeited. It was argued that those gas cylinders were received by him only one or two hours before from the godown and were given to Dayal Singh for onward distribution through Sumer Singh and Narain Singh and the place where they were collected was not a godown but cylinders were kept there only for the purpose of onward distribution to the customers. This very argument finds place at para 8 of the impugned-judgment passed by the learned Additional District Judge.

How possibly and surprisingly the learned appellate court make out a new case for respondent-licensee when such case was not explicitly set up by him. The licensee asserted that the cylinders were given to Dayal Singh, on the basis of the agreement for onward distribution to the customers. Delivery of gas cylinders having been given to delivery agent Dayal Singh, how possibly they could be accepted as lying in their temporary godown so as to take advantage of the aforesaid Note below Condition No.2. Besides presence of gas cylinders of different companies clearly indicates that the L.P.G. was being transferred from the cylinders of the IOCL company to the cylinders of other

companies in violation of condition of the license. The judgment passed by the learned appellate court cannot be sustained in law.

For the reasons cited above, the writ petition is allowed and the impugned judgment passed by the learned Additional District Judge dated 27/1/1998 is set-aside and that of the District Collector dated 24/11/1997 is restored. There shall be however no order as to costs.

(MOHAMMAD RAFIQ), J.

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